



Leibniz Institute for Financial Research SAFE  
Sustainable Architecture for Finance in Europe (<https://safe-frankfurt.de/>)

## SAFE Finance Blog

### The SAFE Regulatory Radar in October 2020

10/30/2020

New rules to strengthen market abuse legislation, proposed adjustments to the Benchmarks Regulation to tackle the LIBOR phase-out, and a new Capital Markets Union Action Plan

## SAFE Regulatory Radar October 2020



*At the end of each month, the SAFE Regulatory Radar highlights a selection of important news and developments on financial regulation at the national and EU level.*

## **Market supervision: Commission adopted new standards for cooperation to prevent market abuse**

In light of the Wirecard case, the European Commission has revised the Market Abuse Regulation (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0596>) (MAR). On 5 October 2020, the Commission adopted an Implementing Regulation ([https://ec.europa.eu/finance/docs/level-2-measures/mar-rts-2020-3102\\_en.pdf](https://ec.europa.eu/finance/docs/level-2-measures/mar-rts-2020-3102_en.pdf)) that lays down implementing technical standards (ITS) with regard to procedures and forms for the exchange of information and cooperation between competent authorities under the MAR (Market Abuse Regulations). The ITS (implementing technical standards) aim to strengthen the existing rules and close the identified gaps in the legislative framework.

In detail, the ITS (implementing technical standards) cover the requirements regarding cooperation and exchanges of information between national competent authorities (NCAs), the European Securities and Markets Authority (ESMA), the Commission, and other regulatory entities. The ITS (implementing technical standards) specify procedures to be followed by ESMA (European Securities and Markets Authority) and NCAs (national competent authorities), such as BaFin for Germany, for acknowledging, replying and processing pending requests and how to respond to unsolicited cooperation or exchange of information and provide the relevant forms to be applied in such procedures. The new provisions also clarify the obligations regarding the confidential information and permission to use the electronic means to request the data.

The Regulation entered into force on 27 October and is binding in all member states.

## **Lending market: ongoing work on the revision of the Benchmarks Regulation in light of the LIBOR phase-out**

On 6 October 2020, the Council reached a common position (<https://data.consilium.europa.eu/doc/document/ST-11049-2020-ADD-1-REV-1/en/pdf>) on the legislative proposal ([https://ec.europa.eu/info/publications/200722-proposal-benchmarks\\_en](https://ec.europa.eu/info/publications/200722-proposal-benchmarks_en)) amending the EU Benchmarks Regulation (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011>) (BMR) in light of the phase-out of the London Interbank Offered Rate (LIBOR) at the end of 2021. The details of the initial proposal were outlined in the SAFE Regulatory Radar in August 2020 (<https://safe-frankfurt.de/news-latest/safe-finance-blog/details/the-safe-regulatory-radar-in-august-2020.html>).

The Council proposed to expand the scope of contracts and financial instruments, for which the Commission would gain the power to designate a statutory replacement rate in case of cessation as well as to extend the transitional period for third-country benchmarks until the end of 2025.

On 7 October 2020, the European Parliament Committee on Economic and Monetary Affairs (ECON) reacted to the Council's position with its draft legislative report ([https://www.europarl.europa.eu/doceo/document/ECON-PR-658859\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/ECON-PR-658859_EN.pdf)). In contrast to the Council, the ECON Committee proposed to limit the intervention power of the European Commission regarding critical interest benchmarks and fallback provisions. Furthermore, the legislative report contains a requirement for the Commission to regularly update the list of foreign exchange benchmarks that are exempted from the BMR (Benchmark Regulation). Lastly, the ECON Committee suggested some changes in relation to waiving margin and collateral requirements in cases of mandatory replacement of a benchmark.

Both documents will serve as mandates for further negotiations between the European Parliament and the Council.

Subsequently, the Financial Stability Board (FSB) has contributed to the smooth LIBOR (London Interbank Offered Rate) transition by publishing a global transition roadmap (<https://www.fsb.org/2020/10/fsb-publishes-global-transition-roadmap-for-libor/>) for LIBOR (London Interbank Offered Rate) that provides a non-binding list of actions for affected firms.

## **Commission published a new Capital Markets Union Action Plan**

On 24 September 2020, the European Commission published its Capital Markets Union ([https://ec.europa.eu/finance/docs/law/200924-capital-markets-union-action-plan\\_en.pdf](https://ec.europa.eu/finance/docs/law/200924-capital-markets-union-action-plan_en.pdf)) (CMU) Action Plan that reflects its priority to ensure the quick recovery from the economic crisis caused by the Covid-19 pandemic, the impact coming from the digitalization of the economy, and raising sustainability issues, and Brexit.

The Action Plan proposes 16 specific actions to reach three main objectives: (i) support a green, digital, inclusive and resilient economic recovery by making financing more accessible to European companies; (ii) make the EU an even safer place for individuals to save and invest long-term; (iii) integrate national capital markets into a genuine single market.

Specific actions include setting up a European Single Access Point, a platform providing EU-wide access to financial and non-financial public corporate disclosures, conducting reviews of Solvency (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0138>) II, European Long Term Investment Fund (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0760>) (ELTIF) and Securitization (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32017R2402>) frameworks, strengthening investor protection standards under the Insurance Distribution Directive (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016L0097>) (IDD), reducing the administrative burdens and supporting consumers' financial education. Furthermore, the plan includes a withholding tax reform as well as a harmonization of insolvency rules and enhanced supervisory convergence.

#### Current public consultations:

- **European Commission:** public **consultation** (<https://ec.europa.eu/info/law/better-regulation/have-your-say/eu-law-proposal/2020-12-15-consultation-on-the-proposed-amendments-to-the-regulation-on-european-investment-funds-review-of-eu-rules>) on the proposed amendments to the Regulation on European Investment Funds (EIF) is Tuesday, 19 January 2021.
- **ESMA:** public **consultation** (<https://www.esma.europa.eu/press-news/esma-news/esma-consults-fund-benchmarks-administrators-under-the-benchmarks-regulation-bmr>) on benchmarks administrators under the Benchmarks Regulation (BMR). The deadline is Friday, 6 November 2020.
- **ESMA:** public **consultation** (<https://www.esma.europa.eu/sites/default/files/library/esma74-362-773-functioning-of-the-mifir-obligation-to-report-transactions-and-reference-data>) on the functioning of the MiFIR obligation to report transactions and reference data. The deadline is Friday, 20 November 2020.
- **ESMA:** public **consultation** ([https://www.esma.europa.eu/sites/default/files/library/esma70-156-2013\\_consultation\\_paper\\_on\\_the\\_functioning\\_of\\_organised\\_trading\\_facilities.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-2013_consultation_paper_on_the_functioning_of_organised_trading_facilities.pdf)) focusing on the (OTF) regime. The deadline is Wednesday, 25 November 2020.
- **EBA:** public **consultation** (<https://eba.europa.eu/eba-consults-revision-guidelines-major-incident-reporting>) on guidelines on major incident reporting under the revised Payment Services Directive (PSD2). The deadline is Friday, 13 November 2020.
- **The European Insurance and Occupational Pensions Authority (EIOPA):** public **consultation** ([https://www.eiopa.europa.eu/sites/default/files/publications/consultations/eiopa\\_consultation\\_draft\\_supervisory\\_statement\\_on\\_risk\\_mitigation\\_techniques\\_underwritten\\_by\\_insurers\\_legal\\_reviewed.pdf](https://www.eiopa.europa.eu/sites/default/files/publications/consultations/eiopa_consultation_draft_supervisory_statement_on_risk_mitigation_techniques_underwritten_by_insurers_legal_reviewed.pdf)) on a draft supervisory statement on risk mitigation techniques undertaken by insurers. The deadline is Friday, 13 November 2020.
- **EIOPA:** public **consultation** ([https://www.eiopa.europa.eu/content/consultation-draft-opinion-supervision-of-the-use-of-climate-change-risk-scenarios-in-the-ors\\_en](https://www.eiopa.europa.eu/content/consultation-draft-opinion-supervision-of-the-use-of-climate-change-risk-scenarios-in-the-ors_en)) on the draft Opinion on the supervision of the use of climate-change risk scenarios in the ORS. The deadline is Friday, 13 November 2020.

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Keywords: Financial Markets ([https://safe-frankfurt.de/news-latest/safe-finance-blog/search-result-blog.html?tx\\_news\\_pi1%5BoverwriteDemand%5D%5Bcategories%5D=181&cHash=84faeb163d529c1d1097a1382efc4cf](https://safe-frankfurt.de/news-latest/safe-finance-blog/search-result-blog.html?tx_news_pi1%5BoverwriteDemand%5D%5Bcategories%5D=181&cHash=84faeb163d529c1d1097a1382efc4cf))

Capital Markets Union (<https://safe-frankfurt.de/news-latest/safe-finance-blog/tag/capital-markets-union.html>)



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Matthias Thiemann, (<https://safe-frankfurt.de/research/researchers/researchers-details/showauthor/316-thiemann.html>)  
Mario Tümmler

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**Der Verlustrücktrag als Mittel der Konjunkturpolitik – Ausweitung des Verlustrücktrags auch auf die Gewerbesteuer erforderlich** (<https://safe-frankfurt.de/policy-center/policy-publications/policy-publ-detailsview/publicationname/der-verlustruecktrag-als-mittel-der-konjunkturpolitik-ausweitung-des-verlustruecktrags-auch-auf-die.html>)

Philipp Lamprecht, ([https://www.jura.uni-frankfurt.de/57450324/Professur\\_f%C3%BCr\\_Steuerrecht\\_und\\_Zivilrecht](https://www.jura.uni-frankfurt.de/57450324/Professur_f%C3%BCr_Steuerrecht_und_Zivilrecht)) Alfons J. Weichenrieder (<https://safe-frankfurt.de/research/researchers/researchers-details/showauthor/52-weichenrieder.html>)

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**The Wirecard lessons: A reform proposal for the supervision of securities markets in Europe** (<https://safe-frankfurt.de/policy-center/policy-publications/policy-publ-detailsview/publicationname/the-wirecard-lessons-a-reform-proposal-for-the-supervision-of-securities-markets-in-europe.html>)

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